

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE GR8 GROUP, LLC,

Case No.

Plaintiff,

-against

COMPLAINT

XM ENTERTAINMENT, LLC,

d/b/a XM EXPERIENCES LLC,

d/b/a MJ ENTERTAINMENT

Defendant.

-----X

The GR8 Group, LLC (“plaintiff”), by and through its attorneys, Lawrence T. Lowen, P.C., as and for its complaint against XM Entertainment, LLC d/b/a XM Experiences LLC , d/b/a MJ Entertainment (“defendant”), hereby alleges as follows:

THE NATURE OF THE ACTION

1. Plaintiff pursues this action for breach of contract, breach of covenant of good faith and fair dealing, unjust enrichment and lost profits.

JURISDICTION AND VENUE

2. Pursuant to 28 USC paragraph 1332, this Court has subject matter jurisdiction as the parties are citizens of different states and the amount in controversy exceeds the sum of \$75,000.

3. On or about February 15, 2016 plaintiff and defendant entered into an agreement (the “Agreement”), whereby defendant would provide certain services to Plaintiff.

4. The parties consented in paragraph 6.4 of the Agreement that, inter alia, “... any court of competent jurisdiction sitting in New York County, New York shall be an appropriate and convenient place and venue to resolve any dispute with respect to this Agreement.”

5. By the terms of the Agreement, defendant consented to personal and subject matter jurisdiction.

THE PARTIES

6. Plaintiff is a limited liability company with its principal place of business in Miami, Florida. Plaintiff provides concierge services to its clients through the use of service companies like the defendant.

7. Upon information and belief, defendant is a limited liability company formed under the laws of California, with principal places of business in California. Defendant markets itself as a luxury full-service experiential entertainment agency specializing in connecting select individuals and corporations with celebrities, musicians, athletes, and influencers, while also providing premium access to in-demand live music, sports, theater, film, and tell it a bit television events all around the world.

FACTUAL ALLEGATIONS

8. The plaintiff and the defendant entered into a written agreement on February 15, 2016, whereby defendant would provide certain services to plaintiff described as “Playing Augusta National Golf Club in Augusta, Georgia....on April 27th, 26th or 25th.” A true and complete copy of the Agreement is attached hereto as Exhibit “A”.

9. The plaintiff paid the defendant a deposit (the “Deposit”) or \$136,800 in connection with the Agreement.

10. The defendant failed to fulfill its obligations and defaulted in the terms of the Agreement by not providing the contracted for guaranteed services referred to in paragraph 8 of this Complaint.

11. Section 3.1 of the Agreement gives plaintiff the right to recover all amounts paid under the Agreement in the event the defendant is not able to deliver a guaranteed service.

12. Despite repeated attempts by plaintiff to recover its deposit due to defendant’s failure to deliver a guaranteed service, and defendant’s promises to pay the same, defendant has not refunded any of the deposit monies to plaintiff.

13. Defendant is obligated to pay reasonable attorney's fees in connection with this matter pursuant to the Agreement.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

14. Plaintiff repeats and re-alleges paragraphs 1 thru through 13 above with the same force and effect as if fully set forth herein.

15. Plaintiff and defendant entered into a valid and binding Agreement.

16. Plaintiff has performed all of its obligations under the Agreement, except as excused or prevented by defendant.

17. Defendant has materially breached the Agreement by, among other things: (1) failing to deliver the guaranteed services under the agreement, (2) failing to refund the amounts plaintiff paid to it under the Agreement

18. As a result of defendant's material breaches of the Agreement, plaintiff has been damaged, which damages are the natural and proximate quant consequence of Defendants breach of the Agreement, including lost profits, in an amount to be determined at trial, but no less than \$136,800.

SECOND CLAIM FOR RELIEF

(Breach of the Covenant of Good Faith and Fair Dealing against Defendant)

19. Plaintiff repeats and re-alleges paragraphs 1through 18 above with the same force and effect as if fully set forth herein

20. Defendant agreed to abide by the terms of the Agreement between plaintiff and defendant. Implied in this contractual relationship was defendant's covenant of good faith and fair dealing.

21. Defendant's actions as set forth above breached this implied covenant of good faith and fair dealing.

22. Defendant's breaches have caused substantial and imminent harm and damage to plaintiff.

23. As a result of defendant's material breaches of the Agreement, plaintiff has suffered significant damage, in an amount to be determined at trial, but no less than \$136,800.

THIRD CLAIM FOR RELIEF
(Indemnification for Legal Fees and Related Costs)

24. Plaintiff repeats and re-alleges paragraphs 1 through 23 above with the same force and effect as if fully set forth herein

25. Pursuant to section of 6.4 of the Agreement, the parties agreed ".....In the event either party commences any proceeding against the other party with respect to this Agreement, the parties agree that the prevailing party (as determined by the authority before which such proceedings commence) shall be entitled to recover reasonable attorney's fees and costs as may be incurred in connection therewith in addition to any such other relief as may be granted."

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

26. Plaintiff repeats and re-alleges paragraphs 1 through 25 above with the same force and effect as if fully set forth herein.

27. In consideration of the Agreement, defendant received payment of \$136, 800 from plaintiff.

28. Defendant has wrongfully refused to abide by the terms of the Agreement with regard to providing a guaranteed service, in violation of the Agreement. It would be unjust and inequitable to allow defendant to benefit in this matter without remuneration to plaintiff. By reason of the foregoing, defendant has been unjustly enriched at the expense of plaintiff, and plaintiff has suffered damages in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

- a. Award the full cost of this action, including attorney's fees, costs and disbursements incurred by plaintiff as required by the provisions of paragraph 6.4 of the Agreement; and
- b. Award compensatory and punitive damages in an amount to be determined at trial; and
- c. Such other and further relief as the Court may deem just and proper

Dated: September 26, 2016
New York, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'L. T. Lowen', with a long horizontal flourish extending to the right.

By: Lawrence T. Lowen, Esq.
LAWRENCE T. LOWEN, P.C.
LL1649862
745 Fifth Ave., Suite 500
New York New York 10151
212-662-0606
212-212-3687 (fax)
ltlowen@lowen.net
Attorneys for plaintiff